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Exhibit No. 7Date 4/16/09Bill No. SB123

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the proposed)	AMENDED NOTICE OF PUBLIC
amendment of ARM 44.10.335 and)	HEARING ON PROPOSED
44.10.336, and the proposed adoption)	AMENDMENT AND ADOPTION
of New Rules I through IX, all related to)	
constituent services accounts)	

TO: All Concerned Persons

1. On March 13, 2008, the Commissioner of Political Practices published MAR Notice No. 44-2-143 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 474 of the 2008 Montana Administrative Register, issue number 5.

2. This amended notice is being filed to provide more information in the reasonable necessity statement for the proposed amendments and adoptions, and to correct an error in paragraph 8 of the notice published on March 13, 2008, regarding the date upon which the sponsor of the legislation was notified.

3. The commissioner believes the reasonable necessity statement published on March 13, 2008, in support of the proposed amendments and adoptions adequately identifies the necessity and rationale for each of the proposed new rules or rule changes. However, in order to provide a more detailed statement of necessity regarding proposed new Rules I through IX, the Commissioner of Political Practices provides the following supplemental statements of reasonable necessity.

GENERAL STATEMENT OF REASONABLE NECESSITY: The 2007 Montana Legislature enacted HB 462, providing for the establishment of constituent services accounts, providing for funding and use of money in the accounts, and establishing reporting requirements for the accounts. The law requires the holder of a constituent services account to file reports disclosing the source of all money deposited into an account and enumerating any expenditures from the account. The law also amended 13-37-240, MCA, which restricts the use and disposition of surplus campaign funds. The commissioner is required to adopt rules to carry out the provisions of chapters 35 and 37 of Title 13, MCA. See 13-37-114, MCA.

The new rules proposed by the commissioner are reasonable and necessary to implement the provisions of HB 462 by establishing clear and consistent requirements for the provisions of the law, in a manner that is fully consistent with the surplus campaign funds restrictions of 13-37-240, MCA, as well as the standards of conduct set forth in Montana's Code of Ethics. Montana's Code of Ethics provides that "holding public office . . . is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees" and states that elected officials and public employees "shall carry out the individual's duties for the benefit of the people of the state." 2-2-103(1), MCA.

The law provides that only surplus campaign funds may be deposited in a constituent services account, and the money in the account may only be used for constituent services. 13-37-240, MCA and 13-37-402(2)(a) and (b), MCA. "Constituent services" means travel, mailing, and other expenses incurred to represent and serve constituents "and authorized in rules adopted by the Commissioner" to implement the provisions of the law. 13-37-401(1), MCA.

To comply with the directive of the Montana Legislature as described above, the commissioner believes it is reasonable and necessary to propose rules clearly setting forth the procedure for opening and closing accounts, establishing recordkeeping and reporting requirements, and describing authorized expenditures from the accounts and prohibited activities related to the accounts. The commissioner has taken the particular approach of proposing a number of detailed rules to provide clarity and certainty for eligible elected officials who choose to establish constituent services accounts, so that they may comply fully with existing law and the intent of the Montana Legislature when it enacted HB 462.

RULE I: The commissioner believes it is reasonable and necessary to adopt a rule that sets out definitions of pertinent terms used throughout the rules implementing the provisions of HB 462, to provide consistency and ease of understanding regarding application of the rules for those eligible elected officials subject to the provisions of the new law.

In enacting HB 462 the Montana Legislature left some terms undefined, such as "constituent" and "leaves public office." The commissioner therefore determined that it is reasonable and necessary to define those terms in the proposed new rules.

In particular, a definition of the term "constituent" is necessary because the Montana Legislature assigned to the commissioner the responsibility to adopt rules to describe eligible expenses incurred to represent constituents and to provide constituent services. "Constituent services," while generally defined in HB 462, is more specifically defined in New Rule V, again in compliance with the directive of the Montana Legislature to the commissioner in 13-37-401(1), MCA.

The definition of the term "compensation" in Rule I is based on the similar definition in ARM 44.12.102, regarding regulation of lobbying.

The definition of the term "in-kind donation" is patterned after the definition of "in-kind contribution" in ARM 44.10.321(1)(d), dealing with reporting of campaign contributions. This definition is included because of HB 462's absolute prohibition against using any funds other than surplus campaign funds to pay for constituent services provided by an elected official. See supplemental statement of reasonable necessity for Rule IV.

"Pre-existing account" is defined in the new rules because it is apparent the Montana Legislature chose to make the provisions of HB 462 applicable only to newly created accounts. The Montana Legislature considered and rejected language in the bill that would have required closure of pre-existing accounts. See page 5, lines 4-7 (interlineated Section 6) of the authorized print version of HB 462. It is therefore necessary to provide guidance regarding accounts that were created and in existence prior to the effective date of the law.

RULE II: The commissioner believes it is reasonable and necessary to adopt a rule that provides guidance and clarity regarding the types of accounts to which the rules apply and do not apply. During deliberations on HB 462, the Montana Legislature considered and specifically rejected the option of applying the provisions of the law to existing accounts. See page 5, lines 4-7 (interlineated Section 6) of the authorized print version of HB 462.

Moreover, HB 462 only applies to certain elected officials -- those "elected to a statewide or legislative office or as a public service commissioner". Elected district court judges and elected local and tribal officials are not authorized to create constituent services accounts under HB 462 and are not subject to the terms of the law.

The commissioner also believes it is important to direct the attention of account holders to other provisions of Montana law, such as the Montana Code of Ethics, that may also apply to the receipt or use of funds by a candidate or elected official. The applicability of other Montana laws may be an issue for candidates and elected officials who are not eligible to create constituent accounts under HB 462, but are not prohibited from creating accounts related to their official duties by HB 462 or any other provision of Montana law.

These "ineligible" elected officials are still subject to the personal benefit and campaign use prohibitions of 13-37-240, MCA if surplus campaign funds are spent or used to fund activities related to their public offices. If these "ineligible" elected officials are also soliciting "donations" to constituent accounts or other accounts related to an "ineligible" elected official's public office, such "donations" could subject the "ineligible" official to complaints under the Ethics Act or the other laws identified in the rule.

RULE III: The commissioner believes it is reasonable and necessary to specifically identify the public offices for which a HB 462 constituent services account may be established. As noted above, HB 462 only applies to elected statewide or legislative offices and public service commissioners. It is important to provide clarity regarding the applicability of the law and the rules.

RULE IV: This rule is reasonable and necessary based on the legislative history of HB 462 and the final language enacted into law. The plain language of HB 462 shows that the provisions of the bill are prospective only. 13-37-402(3), MCA, provides that an eligible elected official "may not establish any account related to the public official's office other than a constituent services account." The Montana Legislature considered and rejected language in the bill that would have required closure of pre-existing accounts. See page 5, lines 4-7 (interlineated Section 6) of the authorized print version of HB 462. In addition, the commissioner believes it is important to clearly set forth specific prohibitions regarding funding and the use of funds from authorized constituent services accounts, in light of the provisions of HB 462 and the prohibitions and restrictions related to surplus campaign funds, as set forth in 13-37-240, MCA. For example, the prohibition against receiving in-kind donations of services in subsection (1)(b)(iii) is necessary to make it clear that eligible elected officials may only use surplus campaign funds to pay for constituent

services, and therefore may not seek assistance from lobbyists and principals in providing services to constituents.

RULE V: HB 462 provides that eligible elected officials may establish and fund a constituent services account using only surplus campaign funds, and that funds in the account may only be used for constituent services. 13-37-402(2)(a) and (b), MCA. "Constituent services" means travel, mailing, and other expenses incurred to represent and serve constituents "and authorized in rules adopted by the Commissioner" to implement the provisions of the law. 13-37-401(1), MCA. The commissioner believes Rule V is reasonable and necessary to fulfill the commissioner's responsibilities as directed by the Montana Legislature. The rule provides in specific detail what types of expenditures are authorized, based on the provisions of HB 462 and the prohibitions and restrictions on the use of surplus campaign funds provided in 13-37-240, MCA. That statute prohibits the use of surplus campaign funds for political campaigns or for personal benefit.

RULE VI: 13-37-402(1), MCA, provides that a constituent services account may be established by filing an appropriate form with the commissioner. The commissioner believes it is reasonable and necessary to adopt a rule that sets forth a procedure and specific requirements for establishing an account, including specification of the information that must be provided.

RULE VII: 13-37-402(4), MCA, requires the holder of a constituent services account to file quarterly reports with the commissioner disclosing the source of all money deposited into the account and enumerating the expenditures from the account. Based on this statutory requirement, the commissioner believes it is reasonable and necessary to adopt a rule setting forth specific requirements, including the dates on which reports are due and the content of each report. In addition, it is reasonable and necessary to provide for record-keeping requirements for holders of accounts.

RULE VIII: The commissioner believes it is reasonable and necessary to adopt a rule to provide for the receipt and disposition of interest paid on constituent services accounts. The accounts may only be funded using surplus campaign funds, and funds in the accounts may only be used to provide constituent services. The commissioner believes it is therefore reasonable and necessary to provide specific requirements for the receipt and use of interest on the accounts, since these funds are subject to the same requirements and restrictions as the funds used to create the accounts.

RULE IX: 13-37-402(5), MCA, states that the holder of a constituent services account shall close the account within 120 days of leaving public office. The commissioner believes it is reasonable and necessary to adopt a rule to establish disclosure requirements for the disposition of funds in a constituent services account, consistent with the prohibitions and restrictions on the disposition of surplus campaign funds in 13-37-240, MCA.

4. All rule changes and proposals as set forth in MAR Notice No. 44-2-143 remain as proposed.

5. The statements of reasonable necessity remain as proposed with the additions as set forth in this notice.

6. Paragraph 8 of MAR Notice No. 44-2-143 is corrected to reflect the actual date upon which the sponsor of the legislation was notified, which was February 1, 2008, via e-mail.

By: /s/ Dennis Unsworth
DENNIS UNSWORTH
Commissioner

By: /s/ Jim Scheier
JIM SCHEIER
Assistant Attorney General
Rule Reviewer

Certified to the Secretary of State June 2, 2008.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the proposed)
amendment of ARM 44.10.335 and) NOTICE OF PUBLIC HEARING ON
44.10.336, and the proposed adoption) PROPOSED AMENDMENT AND
of New Rules I through IX, all related to) ADOPTION
constituent services accounts)

TO: All Concerned Persons

1. On April 21, 2008, at 1:30 p.m., a public hearing will be held in the Old Supreme Court Chambers, Room 303 of the State Capitol, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Commissioner of Political Practices will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Commissioner of Political Practices no later than 5:00 p.m. on April 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Mary Baker, Program Supervisor, Office of the Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; e-mail mabaker@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

44.10.335 DISPOSAL OF SURPLUS CAMPAIGN FUNDS (1) through (5) remain the same.

(6) A candidate or eligible elected official shall abide by the prohibitions on the use of surplus campaign funds specified in 13-37-240, and 13-37-402, MCA, ARM 44.10.336, the provisions of this rule, and the rules in this chapter.

(a) For purposes of the restrictions on the disposal of surplus campaign funds set forth in 13-37-240, MCA, "personal benefit" is defined in 13-37-240(2), MCA. For the purposes of this definition, a candidate's or an eligible elected official's "immediate family" includes the candidate's spouse and minor children only any individual related or connected to a candidate or an eligible elected official as specified in 2-2-303(1), MCA.

(b) For purposes of the restrictions on the disposal of surplus campaign funds set forth in 13-37-240, MCA, "campaign" means any organized effort to secure support or prevent oppose the nomination or election of a candidate for public office, or secure support or prevent oppose passage of a ballot issue.

(c) The following are examples of permissible uses of surplus Surplus campaign funds, including surplus campaign funds deposited in a constituent services account and any interest accrued as provided in [NEW RULE VIII], may only be disbursed as follows:

(i) ~~Return the funds to the contributor contributors, so long as the funds refund to contributors will not result in violate the personal benefit or a contribution to a campaign contribution provisions of 13-37-240 and 13-37-402, MCA, ARM 44.10.336, or the rules in this chapter;~~

(ii) ~~Donation of Donate the funds to any organization or entity, so long as the use of the funds will not result in violate the personal benefit or a contribution to a campaign contribution provisions of 13-37-240 and 13-37-402, MCA, ARM 44.10.336, or the rules in this chapter;~~

(iii) ~~Upon election, use of An elected official other than an eligible elected official may transfer the funds to establish an account to serve a public purpose related to the officeholder's public duties, so long as the funds will not result in personal benefit or a contribution to a campaign;~~

(iv) An eligible elected official may transfer the funds to a constituent services account provided for in Title 13, chapter 37, part 4, MCA, and the rules in this chapter.

(7) A candidate or an eligible elected official shall not contribute surplus campaign funds to a political committee, including a leadership political committee maintained by a political officeholder. However, nothing in this subsection shall be construed as prohibiting the contribution of surplus campaign funds to a political party or a political party committee, so long as the funds are not earmarked for a specific campaign.

(8) remains the same.

AUTH: 13-37-114, MCA

IMP: 13-37-240, MCA

44.10.336 PERSONAL BENEFIT (1) Pursuant to 13-37-240, MCA, the term "direct or indirect benefit" means the distribution of all or any portion of surplus campaign funds, including surplus campaign funds deposited in a constituent services account, that benefit only the a candidate, an eligible elected official, or a member of the a candidate's or an eligible elected official's immediate family, except as specifically authorized by this rule or the rules in this chapter.

(2) ~~Nothing in this rule prohibits the distribution of surplus~~ Surplus campaign funds or constituent services account funds may be donated to a group of individuals or an organization to which the candidate or an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family belongs or is a member, as long as:

(a) ~~the~~ The candidate, an eligible elected official, or a member of the a candidate's or an eligible elected official's immediate family do not control how the group or organization spends the surplus campaign funds or constituent services account funds received by the group or organization;

(b) The candidate, an eligible elected official, or a member of the candidate's or the eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the group or organization to spend the surplus campaign funds or constituent services account funds received by the organization; and

(c) the The candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family receive a benefit that is only incidental to their membership or participation within the group or organization. A benefit is "incidental" if a benefit bestowed on or available to a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family is the same as a benefit bestowed on or available to the public or other members of the group or organization.

(3) Surplus campaign funds or constituent services account funds may be donated to a government entity under ARM 44.10.335(6)(c)(ii), even if the candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family is an employee of the government entity or serves on the government entity's policy making or advisory board, as long as:

(a) The candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family does not control how the government entity spends the surplus campaign funds or constituent services account funds received;

(b) The candidate, an eligible elected official, or a member of the candidate's or the eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the government entity to spend the surplus campaign funds or constituent services account funds received; and

(c) The candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family receives a benefit that is only incidental to their employment by or participation as a board member. A benefit is "incidental" if a benefit bestowed on or available to a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family is the same as a benefit bestowed on or available to the government entity's other employees or board members.

AUTH: 13-37-114, MCA

IMP: 13-37-240, MCA

REASONABLE NECESSITY: The amendments to ARM 44.10.335 and 44.10.336 are necessary to ensure that these existing rules are consistent with the 2007 legislation enacting 13-37-401 and 13-37-402, MCA, the prohibitions governing the use of surplus campaign funds under 13-37-240, MCA, and New Rules I through IX regarding constituent services accounts. These rules clarify and clearly delineate appropriate uses and disposition of surplus campaign funds.

Section 13-37-240, MCA, was approved by the voters as part of I-118 and contains two unequivocal prohibitions: (1) surplus campaign funds cannot be contributed to "another campaign, including the candidate's own future campaign" or (2) used for "personal benefit." The term "personal benefit" is broadly defined in 13-37-240(2), MCA, to mean "a direct or indirect benefit of any kind to the candidate or any member of the candidate's immediate family." The 2007 Legislature reaffirmed the 1994 electorate's commitment to 13-37-240, MCA, and expressly limited the use of constituent services account funds to providing constituent services. See 13-37-401(2) and 13-37-402, MCA. Consistent with the personal benefit prohibitions of 13-

37-240 and 13-37-402, MCA, two major amendments are proposed to ARM 44.10.335:

Amendments to subsection (6)(a) broaden the definition of immediate family to include the same family members who cannot be hired by an elected official under Montana's nepotism statute, 2-2-301, MCA. The current rule definition of "immediate family" was adopted in 1994 and based on a statutory definition of the same term that has since been repealed. See 5-7-213, MCA (1993), and the current language of 2-2-106, MCA. The immediate family amendments prohibit an eligible elected official from using surplus campaign funds to benefit the same family members who could not be hired to work in the eligible elected official's public office. These amendments are necessary because constituent services accounts can only be created to provide services to constituents as part of an elected official's public duties and such funds cannot be used to circumvent the personal benefit prohibitions of 13-37-240, MCA, and Montana's nepotism laws.

Amendments to ARM 44.10.336 further define permissible circumstances under which surplus campaign funds can be donated to a group or organization of which a candidate, an eligible elected official, or a member of a candidate's or eligible elected official's immediate family is a member. The amendments are necessary to clarify conduct that is acceptable under 13-37-240 and 13-37-402, MCA.

4. The rules proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS For the purposes of Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and this chapter:

(1) "Compensation" includes all direct or indirect payments of salaries, fees, wages, and benefits to an individual or a person to provide constituent services. The term includes all payments made to an individual or a person to provide constituent services on behalf of an eligible elected official, including but not limited to, payments for overtime, compensatory time, retirement, health insurance, membership fees for social, civic, and professional organizations, life insurance, professional liability insurance, unemployment or worker's compensation insurance, personal use of a vehicle, rental car payments, disability insurance, travel, meal, and lodging reimbursement, and other benefits.

(2) "Constituent" means an individual who resides in, is employed in, provides goods or services in, attends school in, or has an ownership interest in property or a business in the district or geographic area represented by an eligible elected official.

(3) "Constituent services" has the meaning generally defined in 13-37-401(1), MCA, and more specifically defined in [NEW RULE V].

(4) "Constituent services account" means an account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter.

(5) "Eligible elected official" means an individual elected or appointed to a statewide office, the Public Service Commission, or the Legislature.

(6) "In-kind donation" means the furnishing of services, property, equipment, supplies, rights, or anything of value without charge or at a charge which is less than

fair market value to an eligible elected official for the purpose of providing constituent services.

(7) "Leaves public office" means that an eligible elected official ceases to occupy the public office for which a constituent services account has been established. The term does not include an eligible elected official who is re-elected to the same public office.

(8) "Pre-existing account" means an account related to a public official's office that existed before May 14, 2007 (the effective date of 13-37-401 and 13-37-402, MCA).

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE II APPLICABILITY OF RULES (1) All of the rules in this chapter apply to a constituent services account established by an eligible elected official under Title 13, chapter 37, part 4, MCA, and 13-37-240, MCA, on or after May 14, 2007.

(2) Only the personal benefit and campaign contribution prohibitions in 13-37-240 and 13-37-402, MCA, and [NEW RULE IV(1)(b), (1)(d), (1)(f)], ARM 44.10.335, and 44.10.336 apply to:

(a) a pre-existing account in which surplus campaign funds have been deposited;

(b) an account related to an elected official's office if the elected official has been elected to any public office other than the public offices listed in [NEW RULE III] and surplus campaign funds have been deposited in the account; or

(c) the expenditure of surplus campaign funds by a candidate or an elected official.

(3) The following provisions of Montana law may also apply to the use or expenditure of surplus campaign funds, constituent account funds, or other funds deposited in or expended from accounts related to an elected official's public office:

(a) the Montana Code of Ethics, 2-2-101, et seq., MCA, including the provisions governing the receipt of gifts of substantial value and the receipt of fees or compensation other than the official compensation provided by law;

(b) the provisions of Title 13, chapter 35, part 2, MCA, concerning the improper influence of voters before and after an election and the prohibition against corporate contributions to candidates;

(c) the provisions of Title 13, chapter 37, part 2, MCA; and

(d) the provisions of Title 5, chapter 7, MCA.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE III ELIGIBLE ELECTED OFFICIALS (1) An individual elected to any of the following public offices may transfer surplus campaign funds to a constituent services account created under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter:

(a) Governor;

- (b) Lieutenant Governor;
- (c) Attorney General;
- (d) Secretary of State;
- (e) State Auditor;
- (f) Superintendent of Public Instruction;
- (g) Chief Justice or Justice of the Supreme Court;
- (h) Clerk of the Supreme Court;
- (i) Public Service Commission; or
- (j) The Montana House of Representatives or Senate.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE IV PROHIBITIONS (1) The following prohibitions apply to a constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, ARM 44.10.335 and 44.10.336, and the rules in this chapter:

(a) An eligible elected official may not establish any other account related to the eligible elected official's public office after May 14, 2007, except for a campaign account.

(b) Only surplus campaign funds as defined in ARM 44.10.335(2) may be deposited in a constituent services account established under Title 13, chapter 37, part 4, MCA, and the rules in this chapter, except for the payment of interest as provided in [NEW RULE VIII]. An eligible elected official may not:

(i) deposit funds from a pre-existing account or any other account related to the eligible elected official's public office, including funds in a leadership political committee account, into a constituent services account established under Title 13, chapter 37, part 4, MCA;

(ii) solicit or receive cash or anything of monetary value for deposit in a constituent services account or to provide constituent services; or

(iii) solicit or receive an in-kind donation to provide constituent services.

(c) A constituent services account established under Title 13, chapter 37, part 4, MCA, may only be used to provide constituent services.

(d) Constituent services account funds may not be used for personal benefit as specified in 13-37-240 and 13-37-402, MCA, ARM 44.10.335, ARM 44.10.336, and the rules in this chapter. Constituent services account funds may not be used to pay compensation to an eligible elected official or a member of an eligible elected official's immediate family except as expressly provided in the rules in this chapter.

(e) Expenditures cannot be made from a constituent services account if the eligible elected official has an open campaign account for any elective office, including an elective office other than the office currently held. However, constituent services account funds may be used to pay for constituent services provided or expenses incurred to provide constituent services before the date upon which a campaign account was opened if payments for such services or expenses are supported by written documentation as provided in [NEW RULE VII].

(f) Constituent services account funds may not be contributed to another ballot issue or candidate campaign, including the eligible elected official's own future campaign.

- (2) Subsections (1)(d) and (1)(f) apply to:
 - (a) a pre-existing account in which surplus campaign funds have been deposited; or
 - (b) the expenditure of surplus campaign funds by any elected official described in [NEW RULE II(2)(b)].

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE V AUTHORIZED EXPENDITURES (1) A constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, may be used to pay for the following expenses incurred to provide constituent services:

- (a) communications with constituents or on behalf of constituents, including but not limited to, printing, postage, paper, internet, facsimile, delivery, or other costs incurred to communicate with or on behalf of constituents. Communication costs do not include payment for public advertisements or public announcements of any kind unless such public advertisements or announcements are limited to publicly announcing the date, time, place, and general purpose of a meeting in an eligible elected official's district at which the public will be allowed to participate in a public discussion of matters of interest to an eligible elected official's constituents;
- (b) travel, meal, and lodging expenses as provided in (2);
- (c) equipment and supplies as provided in (3) and (4);
- (d) office expenses related to the lease or purchase of office space as provided in (3) and (4);
- (e) utility costs associated with the use of equipment, supplies, and office space to provide constituent services;
- (f) compensation paid to an individual, other than an eligible elected official or a member of an eligible elected official's immediate family; and
- (g) any other expenses incurred to provide constituent services subject to the requirements and prohibitions of the rules in this chapter.

(2) Constituent services account funds may be used to pay travel, meal, and lodging expenses subject to the following:

- (a) An eligible elected official may be reimbursed for travel, meal, and lodging expenses incurred to provide constituent services at the rates and reimbursement levels specified in Title 2, chapter 18, part 5, MCA, and applicable rules adopted by the Department of Administration.
- (b) An individual, other than a member of an eligible elected official's immediate family, may be reimbursed for travel, meal, and lodging expenses incurred under a written agreement with an eligible elected official to provide constituent services if such reimbursement does not exceed the rates and reimbursement levels specified in Title 2, chapter 18, part 5, MCA, and applicable rules adopted by the Department of Administration.
- (c) A member of an eligible elected official's immediate family may not be reimbursed for travel, meal, and lodging expenses incurred to provide constituent services.

(3) If constituent services account funds are used to purchase office space, equipment, or supplies, the office space, equipment, or supplies purchased with constituent account funds must be used exclusively to provide constituent services. When an eligible elected official leaves public office, any office space, equipment, or unused supplies purchased with constituent account funds must be disbursed as provided in ARM 44.10.335(6)(c).

(4) If constituent services account funds are used to reimburse an eligible elected official or a person, other than a member of an eligible elected official's immediate family, for office space, equipment, or supplies used, in whole or in part, to provide constituent services, all reimbursement payments and the basis for such payments must be documented in writing as provided in [NEW RULE VII]. Any reimbursement for office space, equipment, or supplies must be based on the fair market value of the office space, equipment, and supplies used to provide constituent services.

(5) Nothing in this rule authorizes constituent services account funds to be used or expended in violation of the prohibitions in [NEW RULE IV], ARM 44.10.335 and 44.10.336, 13-37-240, MCA, or Title 13, chapter 37, part 4, MCA.

(6) Constituent services account funds may not be used to pay:

(a) compensation to an eligible elected official for time spent or services rendered to provide constituent services, except as expressly provided in the rules in this chapter;

(b) compensation or any other payment to a member of an eligible elected official's immediate family for time spent or services rendered to provide constituent services;

(c) the cost of polls or public opinion surveys designed or intended to determine the attitudes and opinions of constituents or the public. However, nothing in this subsection prohibits an eligible elected official from encouraging a constituent to express an opinion about matters of interest to the constituent or matters that may be the subject of official action by the eligible elected official;

(d) the cost of all or any portion of an event, meeting, fundraiser, or gathering at which contributions as defined in 13-1-101(7), MCA, will be solicited or received by any person, including but not limited to, a political party, political party committee, candidate, or person or political committee supporting or opposing a candidate or ballot issue;

(e) any direct or indirect travel, lodging, meals, entertainment, or other expenses related to the sponsorship of, attendance at, or participation in an event, meeting, fundraiser, or gathering at which contributions as defined in 13-1-101(7), MCA, will be solicited or received by any person, including but not limited to, a political party, political party committee, candidate, or a person or political committee supporting or opposing a candidate or ballot issue;

(f) any direct or indirect expenditure to support or oppose a candidate or ballot issue;

(g) the cost of entertaining constituents or any other individual or person. However, nothing in this subsection prohibits an eligible elected official from using constituent services account funds to pay for food or drink provided at a publicly announced or publicly advertised meeting held for the general purpose of allowing constituents to participate in a public discussion of matters of interest to the

constituents or an eligible elected official. The expenditures for food and drink at such a meeting must not be lavish or extravagant; and

(h) travel, meals, or lodging expenses incurred by a constituent or any individual other than an individual who has a written agreement to provide constituent services on behalf of an eligible elected official.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE VI OPENING AN ACCOUNT (1) An eligible elected official may establish a constituent services account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, by filing a completed constituent services account form provided by the commissioner. The form shall require an eligible elected official to disclose and provide, as a minimum, the following:

- (a) the name and elective office held by the eligible elected official establishing the constituent services account;
- (b) the district or geographic area represented by the eligible elected official;
- (c) the full name, mailing address, and telephone number that appears on the constituent services account;
- (d) the full name and mailing address of any individual other than the eligible elected official who is authorized to make expenditures from the account (the eligible elected official establishing the account must be one of the signatories on the account);
- (e) the full name, mailing address, and telephone number that appears on the campaign account from which surplus campaign funds are being transferred for deposit in the constituent services account;
- (f) the full name, mailing address, and telephone number of the financial institution at which the constituent services account has been established;
- (g) a copy of the closing report for the campaign account from which surplus campaign funds are being transferred for deposit in the constituent services account;
- (h) the amount of surplus campaign funds being deposited in the constituent services account;
- (i) if all of the surplus campaign funds in the closed campaign account will not be deposited in the eligible elected official's constituent services account, the full name and mailing address of each contributor or entity receiving any portion of the surplus campaign funds pursuant to ARM 44.10.335(6)(c)(ii); and
- (j) for each payment of surplus campaign funds to a contributor or entity under the preceding subsection, the date on which the payment was made.

(2) The form must be signed by the eligible elected official and verified as required by 13-37-231(1), MCA.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE VII RECORDS AND REPORTING (1) An eligible elected official who establishes a constituent services account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, must file quarterly

reports with the commissioner's office after an account is opened. Reports must be filed on or before March 15, June 15, September 15, and December 15 in each calendar year until the account is closed as provided in [NEW RULE IX]. A report must be filed even if no expenditures have been made during the reporting period. The reports must include all expenditures made and interest accrued within ten days of the date on which the quarterly report is due.

(2) Each report must contain, as a minimum, the following:

(a) the amount of money in the account at the beginning of the reporting period;

(b) the amount and rate of interest paid on money in the account during the reporting period pursuant to [NEW RULE VIII];

(c) the full name, mailing address, occupation, and principal place of business (if any) of each person to whom expenditures have been made during the reporting period, including the amount, date, and general statement describing the constituent services that were the basis for the expenditure, and the total amount of expenditures made to each person; and

(d) the amount of money in the account at the end of the reporting period.

(3) Each report must be signed by the eligible elected official and verified as required by 13-37-231(1), MCA.

(4) An eligible elected official must maintain the following additional written documentation for each expenditure from a constituent services account:

(a) The basis for any fair market value determination to be made under the rules in this chapter.

(b) A written log or other documents identifying the date on which constituent services were provided, the street address, city, and county at which the constituent services were provided, a statement describing the constituent services provided, and the full name and mailing address of at least one constituent on whose behalf the constituent services were provided.

(c) If the expenditure involves payments to a person other than the eligible elected official, a written receipt or invoice from the payee.

(d) If the expenditure involves reimbursement for travel, meal, or lodging expenses, such reimbursement must be based on receipts or other written documentation that satisfies applicable requirements of Title 2, chapter 18, part 5, MCA, and rules adopted by the Montana Department of Administration.

(e) If the expenditure involves costs incurred to communicate with constituents, such expenditures must be based on receipts or other written documentation itemizing the basis for the communication expenditure.

(5) An eligible elected official may establish only one constituent services account and no secondary depositories or subaccounts may be established.

(6) All records and reports that must be filed or maintained under the rules in this chapter must be retained by the eligible elected official for a period of four years after the constituent services account is closed.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE VIII INTEREST PAID ON ACCOUNTS (1) Interest paid on a constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, may be received and used to provide constituent services if:

- (a) the interest is deposited directly into the constituent services account;
- (b) the interest is paid by a bank, savings and loan, credit union, brokerage firm, or other financial or investment entity subject to regulation by the state of Montana or an agency of the United States government; and
- (c) the interest paid is the entity's prevailing money market, savings, or certificate of deposit rate paid to other investors or depositors with similar interest bearing accounts.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE IX CLOSING AN ACCOUNT – DISBURSEMENT OF SURPLUS ACCOUNT FUNDS (1) An eligible elected official must close a constituent services account within 120 days after leaving public office as defined in [NEW RULE I(7)]. The closing report must be filed on a form to be provided by the commissioner.

(2) A closing report must disclose the full name and mailing address of each contributor or entity receiving all or any portion of the funds in a constituent services account pursuant to ARM 44.10.335(6)(c)(ii). The closing report must also disclose the date on which the payment was made to each contributor or entity.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

REASONABLE NECESSITY: New Rules I through IX are necessary to establish clear and consistent requirements for the creation and use of constituent services accounts and to implement the provisions of 13-37-401 and 13-37-402, MCA, enacted by the 2007 Montana Legislature. Montana's Code of Ethics declares that "holding public office ... is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees" and that elected officials and public employees "shall carry out the individual's duties for the benefit of the people of the state." 2-2-103(1), MCA. The 2007 constituent services account legislation and 13-37-240, MCA, are consistent with the people's expectations in the Code of Ethics. However, new rules are necessary to provide guidance regarding the edicts in 13-37-240 and 13-37-402, MCA, including reporting requirements and policies governing the expenditures from constituent services accounts, the opening and closing of constituent services accounts, and the maintenance of necessary records.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Dennis Unsworth, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana 59620-2401, or be submitted

electronically to dunsworth@mt.gov, and must be received no later than May 5, 2008.

6. The Commissioner of Political Practices maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their names added to the list shall make a written request which includes the name and mailing address of the person to receive notice. Such written request may be mailed or delivered to the Commissioner of Political Practices at P.O. Box 202401, 1205 Eighth Avenue, Helena, MT 59620-2401, or faxed to (406) 444-1643, or may be made by completing a request form at any rules hearing held by the Commissioner of Political Practices.

7. Dennis Unsworth will preside over and conduct the hearing.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Notice was sent to primary sponsor on February 28, 2008 via e-mail.

/s/ Jim Scheier

Jim Scheier
Rule Reviewer

/s/ Dennis Unsworth

Dennis Unsworth
Commissioner of
Political Practices

Certified to the Secretary of State March 3, 2008.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS AND
THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARINGS ON
ARM 12.2.501 and 12.5.201 and the)	PROPOSED AMENDMENT AND
adoption of New Rules I through V)	ADOPTION
regarding gray wolf management in)	
Montana)	

TO: All Concerned Persons

1. On July 16, 2008 at 6:00 p.m. the Department of Fish, Wildlife and Parks (department) and the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Region 3 offices located at 1400 South 19th Avenue, Bozeman, Montana to consider the amendment and adoption of the above-stated rules.

On July 17, 2008 at 6:00 p.m. the department and commission will hold a public hearing at the Fish, Wildlife and Parks Region 2 offices located at 3201 Spurgin Road, Missoula, Montana to consider the amendment and adoption of the above-stated rules.

On July 18, 2008 at 6:00 p.m. the department and the commission will hold a public hearing at the Fish, Wildlife and Parks Headquarter offices located at 1420 East 6th Avenue, Helena, Montana to consider the amendment and adoption of the above-stated rules.

2. The department and commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the department and commission no later than July 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail jesnyder@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

12.2.501 NONGAME WILDLIFE IN NEED OF MANAGEMENT (1) The following nongame wildlife species are determined by the department to be nongame wildlife in need of management within the meaning of the Nongame and Endangered Species Conservation Act, 87-5-101, MCA, et seq.:

(a) crayfish - *Pacifasticus* spp.;

Orconectes spp.;

(b) freshwater mussels - all species of *Pelecypoda*;

- (c) yellow perch - *Perca flavescens*;
- (d) crappie - *Pomoxis*;
- (e) black-tailed prairie dogs - *Cynomys ludovicianus*;
- (i) under 87-5-102, MCA, department management of black-tailed prairie dogs applies to public lands only; and
- (f) white-tailed prairie dogs - *Cynomys leucurus*;
- (i) under 87-5-102, MCA, department management of white-tailed prairie dogs applies to public lands only; and
- (g) gray wolf - *Canis lupus*.
- (2) remains the same.

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-105, 87-5-131, MCA

12.5.201 ENDANGERED SPECIES LIST (1) The following endangered species list is established in accordance with Title 87, chapter 5, MCA. Except as otherwise provided, it is unlawful for any person to take, possess, transport, export, sell or offer for sale, and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on the following list:

- (a) whooping crane (*grus americana*); and
- ~~(b) Northern Rocky Mountain wolf (*canis lupus irremotus*); and~~
- ~~(c)~~(b) black-footed ferret (*mustela nigripes*).

AUTH: 87-5-107, 87-5-131, MCA

IMP: 87-5-107, 87-5-131, MCA

4. Wolf recovery in Montana began in the 1980s. The gray wolf increased in number and expanded its distribution in Montana because of natural emigration from Canada and a successful federal effort in 1995 that reintroduced wolves into Yellowstone National Park and central Idaho.

In 1987, the United States Fish and Wildlife Service (USFWS) adopted a Northern Rocky Mountain Wolf Recovery Plan. The recovery plan, prepared by the USFWS with the Northern Rocky Mountain Recovery Team, stated its recovery goal of "securing and maintaining a minimum of 10 breeding pairs of wolves in each of the three recovery areas for a minimum of three successive years." The recovery areas are the Greater Yellowstone recovery area, Northwestern Montana recovery area, and central Idaho recovery area. The 1994 USFWS Environmental Impact Statement on the Reintroduction of Gray Wolves to Yellowstone National Park and central Idaho revisited and revamped the Northern Rocky Mountain recovery goal to thirty or more breeding pairs and comprising some 300 or more wolves in a metapopulation. Genetic exchange between subpopulations in the recovery areas allows a high probability of long-term persistence.

In 2002, the Northern Rocky Mountain gray wolf population met the biological goals set out in the recovery plan and the 1994 Final EIS on the Reintroduction of

Gray Wolves to Yellowstone National Park and Central Idaho. 73 Fed. Reg. 10514, 10515. Gray wolves continue to thrive and expand in number and distribution in Montana.

Montana engaged in an extensive, public stakeholder process to develop its policy on the recovery, management, and conservation of wolves. In 2003, Montana adopted the Final EIS and Gray Wolf Conservation and Management Plan (plan) that would allow the state to manage wolves consistent with its state laws, policies, rules, and regulations. In the plan, Montana recognized gray wolves as a native species and committed to the long-term maintenance of a recovered population of wolves in Montana.

In 2005, Montana entered a memorandum of understanding (MOU) that allowed it to implement its USFWS-approved plan within the federal law and guidelines in place at the time. The MOU allowed Montana and the Indian Tribes to lead wolf conservation and management activities within their respective boundaries. In its 2007 Annual Report, Montana reported over 420 wolves in about 73 packs and 39 breeding pairs, with demonstrated distribution among Montana's portion of all three Northern Rocky Mountain subpopulations.

On March 28, 2008, the USFWS designated and removed from the Endangered Species Act the Northern Rocky Mountain gray wolf distinct population segment (DPS). Section 87-5-131, MCA, authorizes the department to remove the wolf from the state list of endangered species once the USFWS removed the Northern Rocky Mountain gray wolf from the federal list of endangered or threatened wildlife and upon a determination by the department that the gray wolf is no longer endangered.

With these rules, the department makes the determination that the gray wolf is no longer endangered in Montana because: wolves are thriving within the state well above the numerical recovery goals; the states of Montana, Idaho, and Wyoming and the USFWS documented distribution among the three subpopulations; and Montana's regulatory mechanisms protect a recovered wolf population. These rules mirror the guidelines that the commission adopted in April 2008 (which are essentially identical to the 10(j) experimental area regulations that were in place in southern Montana prior to the wolf's delisting), and are based on years of state management pursuant to an interagency agreement and federal requirements. The department has information relating to the wolf population, its distribution, its habitat needs, its limiting factors, and other biological and ecological data to determine management measures necessary for the wolf's continued ability to sustain itself successfully.

5. The proposed new rules provide as follows:

NEW RULE 1 COMMITMENT TO PRESERVATION OF THE GRAY WOLF AS RESIDENT WILDLIFE IN NEED OF MANAGEMENT (1) The department has management authority of the gray wolf, a resident wildlife species, and is dedicated

to the conservation of wolf populations within the state of Montana. Pursuant to the definition of management under the Nongame and Endangered Species Conservation Act, 87-5-102, MCA, the department will implement conservation and management strategies to make sure that wolves continue to thrive and are integrated as a valuable part of Montana's wildlife heritage. The department uses an adaptive management framework for the gray wolf, meaning that if the statewide number of wolves exceeds 15 breeding pair, the department may, as outlined in these rules, approve lethal control of wolves. If there are fewer than 15 breeding pair, the department will allow only conservative management of the wolf populations so that the number of breeding pair does not go below 10. These rules set out the comprehensive structure governing control of the gray wolf so that all control actions fall within the department's adaptive management considerations. The commission has authority to adopt a hunting season with quotas for wolves and will exercise that authority as part of the adaptive management framework for the gray wolf.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

NEW RULE II DEFINITIONS The following definitions apply to this subchapter:

(1) "Adaptive management" means a model for wolf conservation and management strategies; changes in the number of packs determined through a monitoring program directs selection of more conservative or liberal management strategies; model incorporates resource objectives, monitoring protocols, evaluation of predicted outcomes, and a decision process.

(2) "Agency" means the Department of Fish, Wildlife and Parks or another agency of the government authorized by the Department of Fish, Wildlife and Parks.

(3) "Attacking or killing" means the actual biting, wounding, grasping, or killing of livestock or domestic dogs.

(4) "Breeding pair" means an adult male and an adult female wolf that have produced at least two pups that survived until December 31 of the year of their birth, during the previous breeding season.

(5) "Confirm that a wolf killed the livestock" means an incident where USDA Wildlife Services conducts a field investigation of dead or injured livestock, at the request of the producer; depredation is confirmed in cases where there is reasonable physical evidence that an animal was actually attacked and/or killed by a wolf. The primary confirmation would ordinarily be the presence of bite marks and associated subcutaneous hemorrhaging and tissue damage, indicating that the attack occurred while the victim was alive, as opposed to simply feeding on an already dead animal. Spacing between canine tooth punctures, feeding pattern on the carcass, fresh tracks, scat, hairs rubbed off on fences or brush, and/or eye witness accounts of the attack may help identify the specific species or individual

responsible for the depredation. Predation might also be confirmed in the absence of bite marks and associated hemorrhaging (i.e., if much of the carcass has already been consumed by the predator or scavengers) if there is other physical evidence to confirm predation on the live animal. This might include blood spilled or sprayed at a nearby attack site or other evidence of an attack or struggle. There may also be nearby remains of other victims for which there is still sufficient evidence to confirm predation, allowing reasonable inference of confirmed predation on the animal that has been largely consumed.

(6) "Habituated" means readily visible in close proximity to people or structures on a regular basis; not threatened by close proximity and may even be attracted to human presence or human food sources; extremely rare behavior in wild wolves, but typical behavior for released captive wolf or wolf-dog hybrid; for wolves, may or may not involve food conditioning.

(7) "Intentional harassment" means the deliberate and preplanned harassment of a wolf, including by less than lethal munitions, such as 12 gauge shot gun rubber bullets and bean bag shells, that are designed to cause physical discomfort and temporary physical injury but not death.

(8) "Livestock" means cattle, calf, hog, pig, horse, mule, sheep, lamb, llama, goat, herding/guarding animals, rhea, emu, and ostrich.

(9) "Opportunistic hazing in a noninjurious manner" means harassment without the conduct of prior purposeful actions such as yelling and radio activated noise makers.

(10) "Threatening to kill" means the actual chasing, testing, molesting, harassing of livestock or livestock herding/guarding animals that would indicate to a reasonable person that an attack was imminent.

(11) "USDA Wildlife Services" means the United States Department of Agriculture, Animal and Plant Health Inspection Service.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

NEW RULE III CONTROL METHODS OF THE GRAY WOLF INCLUDES NONLETHAL AND LETHAL MEANS (1) These rules address when and how the department may carry out nonlethal and lethal control of wolves.

(2) The department may take control actions; pursuant to an interagency agreement, may authorize USDA Wildlife Services to undertake control actions; or pursuant to a future agreement, may authorize the Department of Livestock to undertake control actions. The department is solely responsible for any lethal control decision and ultimately for the status of the gray wolf population.

(3) Control of the gray wolf by agency or by individual includes nonlethal and lethal actions. The department shall address wolf conflicts on a case-by-case basis, connecting response to the conflict in both time and location.

(4) The department shall take an incremental approach to lethal control.

(5) Killing or harassing a wolf not in conformance with these rules is subject to criminal penalties pursuant to 87-1-125, 87-5-106, and 87-5-111, MCA.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

NEW RULE IV ALLOWABLE NONLETHAL CONTROL OF THE GRAY WOLF (1) Control of the gray wolf includes a variety of nonlethal management activities intended to decrease risk of, prevent, or resolve a conflict without killing the wolf in question. Allowable nonlethal control activities include:

- (a) husbandry practices including but not limited to electric fencing, increased human presence, fladry, herding or guarding animals, night pens, shed lambing, carcass removal, alternative pastures, amended pasture rotations, or supplemental feed;
- (b) placement of a radio collar to facilitate increased monitoring of the pack;
- (c) opportunistic hazing in a noninjurious manner; and
- (d) intentional harassment.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

NEW RULE V ALLOWABLE LETHAL CONTROL OF THE GRAY WOLF

(1) On a case-by-case basis, the department allows only the following lethal control of the gray wolf:

- (a) agency control;
- (b) livestock owner, immediate family members, or employees with permit;
- (c) killing of a wolf that is attacking, killing, or threatening to kill a person or livestock; and
- (d) control to protect human safety.

(2) The department may authorize lethal control of problem wolves, after considering the number of breeding pair within the state.

(3) Before authorizing lethal control of a gray wolf for livestock conflict:

(a) the department or USDA Wildlife Services shall conduct the following investigation:

(i) A livestock owner may call the department or USDA Wildlife Services to conduct an investigation of injured or dead livestock.

(ii) The department or USDA Wildlife Services will conduct a field investigation to determine if the death of the livestock was due to natural causes or a predator.

(iii) If a predator killed the livestock, the department or USDA Wildlife Services examines the evidence at the scene to determine if a wolf was responsible.

(b) If the department or USDA Wildlife Services confirm that a wolf killed the livestock, the department seeks input from USDA Wildlife Services and the livestock owner to decide the best course of action. The department may authorize lethal control, assessing each conflict on a case-by-case basis and after considering the following factors:

- (i) pack size and pack history of conflict;
- (ii) livestock operation;
- (iii) age and class of livestock killed;
- (iv) location of conflict;
- (v) potential for future conflict;
- (vi) status and distribution of prey;
- (vii) season; and
- (viii) number of breeding pair within the state.

(4) The department has the discretion to lethally remove a gray wolf if the department determines that the wolf is bold, food conditioned, habituated to humans or livestock, demonstrates behavior patterns indicative of a wolf-dog hybrid or of captive origin, or if it poses an immediate or ongoing threat to human safety.

(5) Pursuant to 87-5-109, MCA, the director of the department may permit killing, possessing, transporting, or exporting of a wolf for scientific, zoological, or educational purposes.

(6) The department may remove a sick, injured, or diseased wolf.

(7) The department may authorize a livestock owner, immediate family members, or employees by permit to take a wolf under the following circumstances:

(a) when the department or USDA Wildlife Services confirms that a wolf killed the livestock; or when the department or USDA Wildlife Services confirms wolves are routinely present on the property or allotment and present a significant ongoing risk to livestock;

(b) the department has authorized USDA Wildlife Services to implement lethal control to resolve conflict;

(c) the department determines that the wolf was not purposefully or intentionally fed or baited to a site;

(d) the permit may last for a maximum of 45 days from the date the department or USDA Wildlife Services confirms the wolf caused damage or wolves are a significant risk to livestock;

(e) the permit expires when the total desired number of wolves are removed by the combined action of the department, USDA Wildlife Services, and individuals named on the permit, or at the end of the 45 days, whichever is first; and

(f) within 24 hours, a person must report to the department killing or injuring a wolf under a permit.

(8) As allowed by 87-3-130, MCA, a person may kill a wolf that is attacking, killing, or threatening to kill a person or livestock, or that is in the act of attacking or killing a domestic dog. This person shall notify the department within 72 hours, preserve the scene, and leave the carcass where it was killed until the department or USDA Wildlife Services investigate the scene, and surrender the carcass to the department.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

6. While the gray wolf was federally protected under the Endangered Species Act, two sets of federal regulations governed control of the wolf to resolve wolf-livestock conflicts. Upon delisting, state plans and laws replaced the federal regulatory scheme. These rules codify the regulations and guidelines that Montana has used to control wolves since it gained management authority through an agreement with the USFWS and are consistent with Montana's plan. Codified rules require consistency in how the department and individuals may approach control of the gray wolf. The department will still take an incremental approach to lethal control of the wolf and will address conflicts on a case-by-case basis by closely matching the conflict to the response both in time and location.

The gray wolf is currently listed under Montana's Nongame and Endangered Species Conservation Act. These administrative rules change the wolf's classification to a nongame species in need of management. The department has the authority to manage the gray wolf as resident wildlife pursuant to its conservation and management plan and pursuant to statute and regulation. Montana's wolf conservation and management plan is based on the work of a diverse stakeholder group. The plan outlines an adaptive management approach that ensures the long-term success of wolf recovery in a landscape where people live, work, and recreate. The plan recognizes the gray wolf as a native species and part of Montana's wildlife heritage. It allows the wolf to find its place on the landscape, similar to other wildlife, and addresses and resolves conflicts. The plan outlines an incremental approach to lethal control.

In February, the commission adopted Interim Guidelines to Resolve Wolf-Livestock Conflicts and to Ensure Human Safety. The guidelines mirrored the federal 10(j) regulations that applied in southern Montana. These rules formally adopt the commission guidelines and federal 10(j) regulations into Montana administrative rule. These rules take the substance of the commission guidelines and the 10(j) regulations as they applied to southern Montana and put them into administrative rule format for the state.

7. Concerned persons may submit their data, views, or arguments concerning the proposed amendment and adoption in writing to Wildlife Division, Wolf ARM Public Comment, P.O. Box 200701, Helena, MT 59620-0701, or e-mail them to fwpwld@mt.gov. Any comments must be received no later than July 25, 2008.

8. Quentin Kujala or another hearings officer appointed by the department, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife, and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on June 13, 2008 by phone and a copy of this notice was mailed on June 16, 2008.

/s/ Susan W. Daly

Susan W. Daly

Acting Director

Department of Fish, Wildlife and Parks

Acting Secretary

Fish, Wildlife and Parks Commission

/s/ Martha Williams

Martha Williams

Rule Reviewer

Department of Fish, Wildlife and Parks

Certified to the Secretary of State June 16, 2008